

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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**IN RE: FRESENIUS** :  
**GRANUFLO/NATURALYTE DIALYSATE** : **MDL NO. 1:13-MD-2428-DPW**  
**PRODUCTS LIABILITY LITIGATION** :

**This Document Relates to:** :

*All Cases* :

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**CASE MANAGEMENT ORDER NO. 15**

**(Bellwether Phase II Discovery Protocol)**

The Court adopts the parties' agreed upon bellwether Phase II discovery protocol as follows:

**I. Identification of Phase II Bellwether Cases**

As a result of plaintiffs' dismissals of certain Phase I bellwether cases, the parties met and conferred to reach consensus on the process by which to select the ten (10) cases from the remaining twelve Phase I cases to proceed to Phase II.

Those ten cases have been identified by the parties as follows:

<u><b>Plaintiff</b></u>	<u><b>Patient</b></u>	<u><b>Case Number</b></u>
Avitia, Sonia	Gaston, Guadalupe	13-12762
Battle, Leola	Battle, Donald	13-12717
Burkes, Sylvester	Davis, Sylvester	14-10712
Conway, Tonya	Conway, Blondell	14-10594
Dial, Florella	Dial, Carley	14-11101
Dickson, Lorraine	Dickson, Thomas	13-10836
Hall, Sheila	Martin, Georgia L.	14-11302
Kyles, Milta	Kyles, Nathaniel	13-10831
Lastorka, Edward	Lastorka, Jackie	13-13066
Sims, Maxine	Sims, Joseph, Jr.	13-10109

These ten cases shall proceed with Phase II discovery, with an effective start date of May 19, 2015.

## II. Phase II Case-Specific Discovery

Pursuant to CMO 11, Phase II bellwether fact discovery is scheduled to close on July 14, 2015. In light of the fact that discovery did not commence until May 19, that deadline is extended until July 31, 2015 and may be further extended only by agreement or leave of court.

Case-Specific Discovery shall include:

- Up to ten additional depositions per side, per case, limited in time to 7 hours each;
- By agreement of the parties, treating physicians deposed during Phase I discovery may be re-deposed during Phase II discovery, limited to 7 hours per deposition, the time to be split equally between the parties except by agreement or leave of Court (these depositions count against the 10 depositions taken per side);
- If both parties notice the same deposition, the time to question the witness shall be split equally between the parties, with priority of questioning to conform to the parties' agreement.<sup>1</sup> Should additional time to question the witness be needed by either side, the parties shall meet and confer on the details of any such further questioning;
- Written discovery shall proceed in accordance with the Federal Rules of Civil Procedure except that the number of discovery requests available in Phase II discovery shall be reduced by the number of requests made during Phase I discovery in each given case; and
- The Federal Rules of Civil Procedure govern all other discovery not otherwise addressed herein.

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<sup>1</sup> By agreement of the parties as reported to the Court: Plaintiffs have priority in the following Phase II cases (by name of Plaintiff): Kyles, Battle, Conway, Dial and Dickson; Defendants have priority in the remaining Phase II cases: LaStorka, Sims, Burkes, Hall and Avitia.

All other aspects of CMOs 10 and 11 as may pertain to Phase II bellwether cases otherwise continue to remain in effect.

**SO ORDERED** this 7th day of July, 2015.

/s/ Douglas P. Woodlock

DOUGLAS P. WOODLOCK, J.